

NTSB Order No. EA-4935

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 11<sup>th</sup> day of January, 2002

Docket SE-16019

violation of section 61.51(i) of the Federal Aviation Regulations ("FARs").<sup>2</sup> We deny respondent's appeal.

According to the Administrator's complaint, on July 16, 1999, respondent was administering a biennial flight review to another pilot when the aircraft they were aboard, a Cessna 172RG, suffered a gear-up landing at Winsted Municipal Airport, Winstead, Minnesota.<sup>3</sup> On July 22, 1999, Federal Aviation Administration ("FAA") personnel from the Minneapolis Flight Standards District Office ("FSDO") assigned to investigate the incident requested by letter that respondent present his pilot logbooks and flight instructor records to them for inspection.<sup>4</sup> Respondent failed to do so.

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<sup>2</sup> FAR section 61.51, 14 C.F.R. Part 61, states in part:

**Sec. 61.51 Pilot logbooks.**

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(i) *Presentation of required documents.* (1) Persons must present their pilot certificate, medical certificate, logbook, or any other record required by this part for inspection upon a reasonable request by

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- (i) The Administrator;
- (ii) An authorized representative from the National Transportation Safety Board; or
- (iii) Any Federal, State, or local law enforcement officer.

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<sup>3</sup> The Administrator filed a copy of her Order of Suspension as the complaint, in accordance with the Board's procedural rules. See 49 C.F.R. 821.31.

<sup>4</sup> The Order of Suspension now also demands that respondent submit, in addition to the logbooks and flight instructor records, his medical certificate for inspection.

In answer to the Administrator's complaint, respondent filed a motion to dismiss stating:

Part 830 describes events which must be reported. The event described in the Order of Suspension is not among them. Since the involvement of the Minneapolis FSDO in this event was neither required nor invited, its request was an unreasonable invasion of privacy, and the action by the Regional Counsel is moot.

Respondent's Motion to Dismiss (In Lieu of Answer) at 1.<sup>5</sup>

The law judge issued an order denying respondent's motion on September 26, 2000, explaining that the proper scope of review is the reasonableness of the Administrator's request to examine a pilot's records. See, e.g., Administrator v. Weinstein, NTSB Order No. EA-3675 (1992).<sup>6</sup> The law judge's order stated that "[t]he reasonableness issue is one that is properly litigated in a trial setting[]" and, presumably because respondent was appearing before him pro se, overruled respondent's motion in lieu of an answer and gave respondent another 20 days to file an answer to the Administrator's complaint. On November 21, 2000, after respondent failed, again, to file an answer to the complaint, the Administrator filed a Motion to Limit Hearing to Sanction. On December 11, 2000, the law judge granted the

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<sup>5</sup> Respondent appears to confuse the NTSB accident and incident notification and reporting requirements, set forth in 49 C.F.R. Part 830 in accordance with the the Board's accident investigation mission, with the FAA's authority to regulate and exercise oversight over certificated airmen.

<sup>6</sup> The law judge's order and the Administrator's response to respondent's motion to dismiss, both of which were served upon respondent, provided citations to, and an explanation of, our  
(continued . . .)

Administrator's motion, noting that as of that time respondent had neither responded to the Administrator's motion nor filed an answer.

At the hearing, notwithstanding the law judge's ruling limiting the hearing to the issue of sanction, respondent was given significant leeway to discuss the merits of his case. Respondent admitted that he had not provided FAA personnel access to the requested records. It is also apparent that he believes that the FAA's request to examine his records was unreasonable, or, perhaps more accurately, at least that the Administrator must first prove her request to be reasonable before he must divulge them. Respondent also appears to believe that the Administrator's request to inspect documents is unreasonable because his Aviation Safety Reporting System ("ASRS") report pertaining to the gear-up incident provided him immunity. At the conclusion of the hearing, the law judge upheld the Administrator's Order of Suspension in its entirety, noting that a 30-day suspension is the minimum sanction under the Administrator's Sanction Guidance Table.

On appeal, respondent raises the same arguments that he raised below. As a matter of law, respondent has stated no cognizable defense to the Administrator's charges. As an FAA-certificate holder, respondent should understand that he is obliged to adhere to the FAA's regulations, including the

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holding in Weinstein.

requirement of FAR section 61.51(i) that he respond promptly to all reasonable requests for inspections by the Administrator or her representatives. A refusal by an airman to respond to such requests from the agency tasked with regulating pilots necessarily carries the risk that, as happened here, a defense that the request was not reasonable is not sustained.<sup>7</sup> We have previously held that 'reasonable' in the context of FAR section 61.51(i) means that "compliance presents no undue or inappropriate burden[,]" for "the Administrator is not obligated to explain or establish why [she] wants or should be permitted to see the logbooks or other records [she] is authorized to review under regulations[.]" Weinstein at 5 (1992); compare Administrator v. Ringer, 3 NTSB 3948, 3949 (1981) (an FAA request to re-examine an airman can be sustained only if there is a potential nexus between an event giving rise to the re-examination request and pilot competence).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's initial decision upholding the Administrator's Order of Suspension is affirmed; and
3. The 30-day suspension of respondent's certificates shall begin 30 days after the service date indicated on this

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<sup>7</sup> Respondent, in fact, did not put on any colorable claim of unreasonableness, and, specifically, made no claim of circumstances that would make it unreasonable to expect him to provide the records for inspection within the 10-day period originally requested by his local FSDO personnel.

opinion and order.<sup>8</sup> In the event respondent does not produce the requested records before or within the 30-day suspension period, the suspension shall remain in effect indefinitely until such time that respondent fully complies with the Administrator's inspection request.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>8</sup> Respondent must physically surrender his airman certificates to an appropriate representative of the Administrator, in accordance with FAR section 61.19(f).